HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 5315/01 (M/S)
(Old No. 18814/1989)

Smt. Vidhyawati and others
Vs
D.J. and others

Approved for reporting

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~~Not Approved for Reporting~~

Date of decision 27.8.04.

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

WRIT PETITION NO. 5315 (M/S) OF 2001.
(Old No. 18814/1989)

Smt. Vidyawati and others .....Petitioners.

Versus

District Judge and others .....Respondents.

Sri Gopal Narain for the petitioners.
Learned C.S.C., Sri B.P. Nautiyal/Hari Mohan Bhatia for the respondents.

With

WRIT PETITION NO. 5315 (M/S) OF 2001

Smt. Vidyawati and others .....Petitioners.

Versus

Addl. District Judge and others .....Respondents.

Sri Gopal Narain/Sanjay Kaushik for the petitioners.
Learned C.S.C.

Hon'ble Rajesh Tandon J.

By the present writ petition the petitioners have challenged the order passed by the trial court as well as Revisional Court whereby the suit of the plaintiff-respondents for ejectment and recovery of arrears of rent and the damages from the property in dispute has been decreed.

Briefly stated the plaintiff respondents no. 3 to 8 have filed the suit against the petitioners on the ground that the property in dispute is not situated in the Municipal limits of Dehradun and it was not governed by the U.P. Act No. 13 of 1972. However, contesting respondents have stated that the property in suit was let out to the petitioners at the sum of Rs. 20/- per month and they have not paid the rent since June 1977 and hence the tenancy was terminated by way of notice duly served upon the petitioners.

Petitioners have filed the written statement and admitted the rate of rent @ Rs. 20/- per month. However, the defendants have stated that they have made permanent construction with the permission of the original landlord and as such he cannot be evicted. It was also stated that the land in question was a Bhumidhari land and was governed by the U.P.Z.A. & L.R. Act and as such the suit was not maintainable. Both the courts below have framed the points for determination. The judge Small Causes Courts has also recorded the finding that since the tenancy has been admitted by the petitioners therefore, the relationship of landlord and a tenant having been admitted between the parties, the petitioners cannot be permitted to deny the title. It was also not permissible for the defendants to state that they are licencees.

So far as the Bhumidhari land is concerned, the issue has already been decided by the Judge Small Cause Court. Against the said order the petitioners went in revision and the revisional court has also dismissed the revision and as such it is not permissible to agitate the question again and again. On 23.04.1984, the District Judge, Dehradun has observed as under:-

"In my opinion, this argument is devoid of force. It may be stated that in his said application (Paper No. 121-C) the revisionist has stated that because the court of J.S.C.C. could not take cognizance, of this cases, hence the plaint should be returned to the respondent for presentation to the proper court, in my opinion who is as already absented, the learned lower court, vide its order, dated 22.08.78 had decided that it had jurisdiction to take cognizance of this, but there was no question of returning the plaint to the respondent on the ground that it had no jurisdiction to take cognizance of this case, besides the revisionist had not produced any evidence in support of his application (Paper No. 121-C) to there that the respondent had granted any licence to the revisionist in respect of any part of the property in dispute and that the court of J.S.C.C. had no jurisdiction to entertain the suit furthermore, I am of the opinion that if it was the contention of

the revisionist that he learned lower court had no jurisdiction to take cognizance of this suit, the property cause for the revisionist lay to more an application for amendment of the written statement and to raise the plea of jurisdiction. The revisionist possibly could not do the same because his earlier application (Paper No. 19-C) with regard to the same had been rejected by the learned lower court on 22.8.78."

The learned District Judge vide his order dated 23.4.1984 has already decided the application paper no. 121-C with regard to the return of the plaint for presentation to the proper court. On 22.8.1978 the Judge Small Cause Court had decided this controversy that the court has jurisdiction as it was a simple suit for arrears of rent and the defendants in their written statement has admitted the relationship of the lessor and lessee.

Both the parties have admitted that the disputed house existed on Khasra Plot no.192 and the said house has been constructed on the Abadi land. Therefore the objection of the petitioners, that the court has no jurisdiction cannot be allowed to be raised in the writ petition.

Both the courts below have recorded the concurrent findings of fact that the defendants have admitted the tenancy @ Rs. 20/- per month, it is not expected from a tenant to deny the title of the plaintiff-respondents. The petitioners have failed

to discharge their burden that the land in question is a Bhumidhari land. Once the property has been held to be on the abadi land there is no requirement of Sec. 143 of U.P.Z.A. Act and as such the land remains being not an agriculture land, the Judge Small Cause Court has rightly decreed the suit. The plaintiff/respondents have stated in his plaint that the premises in dispute is away from 26 km. from the Municipal area and as such the provisions of U.P. Act No.13 of 1972 are not applicable to the premises in dispute.

So far as paragraph no. 1 of the plaint is concerned the same has been admitted in the written statement. In paragraph 2 of the written statement further it has been admitted by the petitioners that he is a tenant at the rate of Rs. 20/- per month. Paragraphs no. 1 and 2 of the written statement are quoted below:-

"*f*- fQdjk u0 1 vth nkos e; g rlyhe g fd okn xLr lEifRr lgli ijxuk iNok nu fty&ngjknu fty e fLFkr g cfd;k rlyhe ugh gA

„- fQdjk u0 „ vth nkok e ifroknh dk oknhx.k dk fdjk;nkj *f*‡@& :i;k ekgokj dh nj l gkuk rko mtjkr ethn rlyhe gA cfd;k xyr g vkj rlyhe ugh gA okn xLr lEifRr dk fooj.k Hkh xyr g vkj rlyhe ugh g A"

In Jyoti Ram Vs. District Judge, Saharanpur and another reported in Allahabad Rent Cases, 1995 (1), it has been held that when there is no relief for declaration in the plaint, it is a plain and simple suit for recovery of arrears of rent and eviction.

Since the premises in dispute is not covered under U.P. Act no. 13 of 1972 as it is beyond the Municipal area. Both the court below have rightly held that the provisions of Act No. 13 of 1972 have no application to the premises in dispute.

The writ petition is concluded by findings of fact as held in ***Surya Dev Rai Vs. Ram Chander Rai and others 2004 (1) ARC page 519*** para 7 to be quoted below:

"In Surya Dev Rai Vs. Ram Chander Rai and others, JT 2003 (6) 465: 2003 SCFBRC 512:2003 (2) ARC 385, *it has been held by the Supreme Court that neither in the writ of certiorari not in supervisory jurisdiction under Article 227 of the Constitution, mere errors of fact or of law cannot be corrected unless it is found that the error is manifest and apparent on the fact of the proceedings such as when it is base on clear ignorance or utter disregard of the provisions of law and a grave injustice or gross failure of justice has occasioned thereby. Since the writ petition has been filed*

by taking new pleas which have never been taken earlier in the litigation between the parties, I am of the view that the writ petition is to be dismissed."

Relying upon the earlier judgment in the case of Surya Dev Rai Vs. Ram Chander, SCC 2003 Vol. 6 page 675, the Apex Court has held in the case of Ranjit Singh Vs. Ravi Prakash (2004) 3 Supreme Court Cases 682 as below:

"In Surya Dev Rai Vs. Ram Chander Rai this Court has ruled that to be amenable to correction in certiorari jurisdiction, the error committed by the Court or authority on whose judgment the High Court was exercising jurisdiction, should be an error which is self-evident. An error, which needs to be established by lengthy and complicated arguments or by indulging in a long-drawn process of reasoning, cannot possibly be an error available for certiorari by writ of certiorari. If it is reasonably possible to form two opinions on the same material, the finding arrived at one way or the other, cannot be called a patent error. As to the exercise of supervisory jurisdiction of the High Court under Article 227 of the Constitution also, it has been held in Surya Devi Rai that the jurisdiction was not available to be exercises for indulging in re-appreciation or evaluation of evidence or correcting the errors in drawing inferences like a Court of appeal. The High Court has itself recorded in its judgment that- "considering the

evidence on the record carefully" it was inclined not to sustain the judgment of the appellate Court. On its own showing, the High Court has acted like an appeal Court which was not permissible for it to do under Article 226 or 227 of the Constitution."

I find no interference in the orders passed so as to interfere under Article 226 of the Constitution of India.

However, in view of the facts, the petitioners are granted time by 31st December, 2004 to vacate the premises provided undertaking is given before the trial court within 15 days after the receipt of the certified copy of this order.

Subject to the aforesaid observations, the writ petition is dismissed. No order as to costs.

(Rajesh Tandon J.)

Dt./- 27.8.2004.
P.S.R.